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October 14, 2024

Judge Christopher C. Conner
U.S. District Court
228 Walnut Street
Harrisburg, PA 17101

Re: *Hon. Guy Reschenthaler, et al. v. Secretary Al Schmidt, et al.*, 24-cv-1671-CCC

Dear Judge Conner:

Pursuant to the Court Order, dated Friday, October 4, after contacting counsel for the Defendants I emailed informal prehearing written discovery on Tuesday, October 8 about 2:40 p.m. The written discovery was targeted to confirming the PA Department of State's and counties' non-verification of UOCAVA voter registration information. The written discovery included interrogatories, document requests and requests for admission. The requests for admission included a request for admission that Amended Complaint Exhibit L—a diagram—was an accurate representation of the Defendants' processes with the counties regarding voter registration applications, absentee ballot applications and absentee ballot processes.

Counsel replied, by agreeing to schedule a 9 a.m. call for Thursday, October 10, and indicating that they would not be willing to respond to the discovery because they “are of the position that no factual development is necessary for the Court to resolve this matter.” During the Thursday call, counsel repeated, more or less, that the Defendants' position is discovery is unnecessary because the Defendants are of the position that no factual development is necessary for the Court to resolve this matter. In response, I informed counsel on the October 10 phone call that the Department of State's 2024 ballot application reports are evidence of the Defendants' and Counties' non-verification policy as zero UOCAVA applications are pending identification—and that we would be scouring the October 11 filings by the government for attempts to make these facts disputed. After the phone call on October 10, I was able to email to counsel for Defendants the information below from the PA Department of State's 2024 ballot application data file as supporting evidence of the Defendants' and Counties' non-verification policy as zero UOCAVA absentee ballot applications are pending identification verification.

Ballot Application Types	Application Type	Ballots	ID Pending / No ID
Online MB Verified	OLMAILV	358,693	Verified
Online AB Verified	OLREGV	9,694	Verified
Paper MB	MAILIN	846,577	5,685
Online MB Not Verified	OLMAILNV	324,215	1,849
Paper AB	REG/CIV	13,541	172
Online AB Not Verified	OLREGNV	2,888	53
UOCAVA Ballot Types			
Federal Only (Unregistered)	F	12,794	0
Civilian Overseas	CVO	10,287	0
Military	M	4,178	0
Civ. Overseas Remote/Isolated	CRI	82	0
Military Remote/Isolated	MRI	51	0
UOCAVA Ballot Applications	TOTAL	27,392	0

Figure 1: DOS data from 10/7/2024, AB= absentee ballot application, MB = mail ballot applicationⁱ

On Friday, we received the Defendants’ and Intervenor’s briefs which included Defendants’ qualified admissions. Plaintiffs believe that the public documents evidence and the Defendants’ qualified admissions confirm the following facts:

1. Defendants have instructed counties that HAVA voter registration application identification information on UOCAVA voter registration applications is not required and, thus, Defendants do not facilitate the verification and matching of driver’s license numbers or social security numbers for UOCAVA voter registration applicants who provide DL or SSN numbers.
2. The PA Department of State Defendants have instructed counties that no verification is required for absentee ballot applications submitted by UOCAVA applicants and, thus, Defendants do not facilitate the verification of eligibility and identity for UOCAVA absentee ballot applicants who request ballots for federal elections.
3. The PA Department of State Defendants have instructed counties not to register UOCAVA non-military applicants who indicate that they live overseas and do not intend to return to the US or that their intent to return is uncertain. Instead, these applicants are identified as Federal Voters and receive a ballot without being registered.

If that is true, then the remaining issues relate to the interpretation of the law and application of the law in Pennsylvania with regard to federal elections. Consistently, the Defendants have repeatedly taken the position “no factual development is necessary to resolve this matter.”

If the court is satisfied with Defendant’s qualified admissions – as we are – then Plaintiffs believe that the matter can proceed based on the existing record. If the Court is not satisfied with the Defendant’s qualified admissions, Plaintiffs are prepared to proceed with discovery, including depositions prior to the Friday hearing, or proceed with an evidentiary hearing as the court may order.

Sincerely,

/s/Erick G. Kaardal
Erick G. Kaardal

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ⁱ The chart was created on October 10 using PA Department of State's 2024 mail and absentee ballot application data file (as a snapshot in time) as of October 7, 2024. The data was downloaded to a computer and analyzed. The following information for non-UOCAVA ballot application types was derived from that PA Department of State data file: online mail ballot application verified (OLMAILV); online absentee ballot application verified (OLREGV); paper mail ballot application (MAILIN); online mail ballot application not verified (OLMAILNV); paper absentee ballot application (REG/CIV); and online absentee ballot application not verified (OLREGNV). Next, the following information for UOCAVA ballot application types was derived from the PA Department of State's data: federal only --unregistered civilian (F); civilian overseas (CVO); military and military dependents (M); civilian overseas remote/isolated (CRI) and military remote/isolated (MRI). The number of 2024 ballot applications for all ballot application types, non-UOCAVA and UOCAVA, were derived from the PA Department of State's ballot application data file and inserted in the chart for each ballot application type listed. The sum of all UOCAVA ballot application types for 2024 is presented on a separate row at the bottom of the chart.